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No. 86-_____

In The Supreme Court of the United States

October Term, 1986

THE STATE OF MISSISSIPPI,

PETITIONER

VERSUS

DONNIE WAYNE FLOYD,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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QUESTIONS PRESENTED FOR REVIEW

1. Does an investigatory stop, based upon reasonable, articulable suspicion of criminal activity, inevitably become a de facto arrest, requiring the existence of probable cause, whenever the suspect is handcuffed by the detaining officer?

2. Does an investigative stop inevitably become a de facto arrest whenever the suspect cannot reasonably believe that he is free to leave the scene of the detention?

3. May a police officer make an investigative stop on the basis of an official radio directive and hold the suspect for questioning by another officer, although the detaining officer has no knowledge of the facts and circumstances forming the basis of the reasonable, articulable suspicion of criminal activity?

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NO. 86- _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

THE STATE OF MISSISSIPPI,

Petitioner,

vs.

DONNIE WAYNE FLOYD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSISSIPPI

The State of Mississippi respectfully requests the Supreme Court of the United States to grant this Petition for Writ of Certiorari to the Supreme Court of Mississippi.

OPINION BELOW

The opinion of the Supreme Court of Mississippi, review of which is sought herein, is published officially in Donnie Wayne Floyd vs. the State of Mississippi, 500 So.2d 989 (Miss., 1986).

JURISDICTION

The judgment was rendered on December 10, 1986, and the Petition for Rehearing was denied on February 11, 1987.

The Petitioner believes that this Petition is filed timely and that jurisdiction to review the said judgment is conferred on this Court by authority of 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides,

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

A. Procedural History: The Circuit Court of Alcorn County, Mississippi, upon a jury verdict of guilty, sentenced Donnie Wayne Floyd on November 2, 1983, to a term of fifteen years' imprisonment and a fine of $35,000 for possession of marijuana with intent to sell, and to a term of three years' imprisonment and a fine of $3,000 for possession of cocaine. Section 41-29-139, Miss. Code of 1972 (Supp.).

At trial, Floyd's motion to suppress the marijuana and cocaine, on the ground that their seizure resulted from an illegal arrest, was overruled by the trial court. On appeal, Floyd included this ruling among his assignments of error to the trial court. The Mississippi Supreme Court found this ruling to be in error and reversed and remanded the case.

In the companion case, the Mississippi Supreme Court on February 18, 1987 (Cause No. 56,327), affirmed the conviction of Bruce Alan

Boches for possession of marijuana with intent to sell. A Petition for Rehearing in that case, filed by the Appellant Boches, has not yet been ruled upon.

B. Substantive Facts: On July 13, 1982, Mississippi Highway Patrol officers were conducting a routine roadblock on U.S. Highway 72 just east of Corinth[1]/ in Alcorn County, Mississippi, checking traffic in both directions for drivers' licenses, license plates and inspection stickers.

About 7:30 p.m., just before sunset, Donnie Wayne Floyd and Bruce Alan Boches, travelling in tandem in two automobiles, approached the roadblock from the East and pulled off together into a driveway about one hundred to one

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1/ Corinth is in northeastern Mississippi about twenty-five miles west of the Alabama line, about five miles south of the Tennessee line, and about one hundred miles east of Memphis, Tennessee. Highway 72 runs east-to-west across extreme northeastern Mississippi, connecting Memphis and Corinth.

hundred fifty yards before reaching the roadblock.

The Highway Patrol officer-in-charge, Sergeant McDaniel, drove toward the two cars to investigate, and, as he approached them, the cars backed out of the driveway. Floyd drove toward the roadblock and Boches drove away in the opposite direction. McDaniel pursued and stopped Boches and learned that Boches had a Tennessee driver's license, although the car had a Mississippi license plate, and that Boches could not produce ownership papers or otherwise account for ownership of the car. McDaniel also noticed a strong odor of raw marijuana about the car. McDaniel informed Boches that he would be detained until ownership of the car could be ascertained, and he instructed the other officers by radio to stop Floyd at the roadblock.

However, Floyd had already been passed through the roadblock. One of the officers at-

tempted to pursue Floyd, but lost him in traffic, and directives were given by radio to other Highway Patrol officers in the area to stop and detain Floyd.

Highway Patrolman Graddy, on duty on Highway 72 west of Corinth, received the description of Floyd and his car and stopped Floyd at about 9:00 p.m. just inside the next county, about fifteen miles west of Corinth. He notified the highway patrol distict office that he had Floyd in custody and was advised that other officers were on their way and to be careful. Graddy then handcuffed Floyd. Graddy did not know why he had been instructed to stop Floyd and did not know why the district office had advised him to be careful.

About five to ten minutes later, Patrolmen Hobson and Clayton arrived. Both had been at the roadblock, and both knew McDaniel's reasons for wanting Floyd stopped. On his arrival, Patrolman Hobson reached into Floyd's car to

switch off the ignition. As he passed by the rear of the car on his way to do so, he noticed a strong odor of marijuana at the rear of the car. After switching off the ignition, he opened the trunk and found three bales of marijuana. Subsequently, at the county jail, a quantity of cocaine also was found in the car.

REASONS FOR GRANTING THE WRIT

1. The decision of the Mississippi Supreme Court, holding that the handcuffing of a suspect automatically transforms an investigatory stop into a de facto arrest, is in conflict with decisions of federal courts of appeals and of State courts of last resort: United States v. Bautista, 684 F.2d 1286, 1289-1290 (9th Cir., 1982), cert. den., 459 U.S. 1211, 103 S.Ct. 1206, 75 L.Ed.2d 447 (1983); United States v. Kapperman, 764 F.2d 786, 790 fn. 4, reh. den., 770 F.2d 1084 (11th Cir.,

1985); Tillman v. State, 275 Ark. 275, 630 SW2d 5, 7-8 (1982), cert. den., 459 U.S. 1201, 103 S.Ct. 1185, 75 L.Ed.2d 432 (1983); People v. Weeams, 665 P.2d 619, 622-623 (Colo., 1983).

2. The decision of the Mississippi Supreme Court, holding that a suspect is under de facto arrest, requiring the existence of probable cause, whenever he cannot reasonably believe that he is free to leave the scene of the detention, is in conflict with the decisions of this Court: Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968); United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

3. The question of whether particular methods of detention, such as handcuffing, are inevitably beyond the scope of an investigative stop in the absence of probable cause is an important question that has not been, but ought to be, directly decided by this Court. The decision of the Mississippi Supreme Court on this

question conflicts indirectly with the holding of this Court in United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985), that "common sense and ordinary human experience must govern over rigid criteria" in the evaluation of the reasonableness of the length of the detention. 470 U.S. at 685, 105 S.Ct. at 1575, 84 L.Ed.2d at 615.

4. The ruling of the Mississippi Supreme Court that it was unnecessary to decide whether the detaining officer in this case was authorized to effect the investigative stop on the basis of a cursory directive from his district office is in conflict with the decision of this Court in United States v. Hensley, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985).

5. The decision of the Mississippi Supreme Court was based upon federal rather than State law. That Court did not state whether it was deciding federal or State issues; however,

its reliance upon decisions of this Court, either directly or indirectly through reliance on its own decisions which in turn rested upon decisions of this Court, demonstrates that it was deciding questions of federal law. This Court therefore is authorized to reach the merits of the questions presented herein. Oregon v. Kennedy, 456 U.S. 667, 670-671, 102 S.Ct. 2083, 2087, 72 L.Ed.2d 416, 421-422 (1982).

ARGUMENT

The Mississippi Supreme Court held that the marijuana and cocaine seized from Floyd's car should have been suppressed because the searches which revealed them were incident to an illegal arrest, since the officers lacked probable cause to make an arrest at the time Floyd was handcuffed by Patrolman Graddy. 500 So.2d at 992, Appendix at A14. The Petitioner does not challenge the Mississippi Supreme

Court's finding that probable cause to effect a custodial arrest was lacking at the time Floyd was handcuffed, but does challenge its ruling that probable cause was needed in order to justify Graddy's handcuffing of Floyd under the circumstances that existed.

Floyd was the subject of a constitutionally valid investigative detention, the character and validity of which were not altered by the handcuffing. When Patrolman Hobson arrived and smelled the odor of raw marijuana at the rear of the car, he had probable cause to believe that the car was transporting marijuana, Miller v. State, 373 So.2d 1004, 1006, 1008 (Miss., 1979), and his search of the trunk of the car was legal under the automobile exception[2]/ to the warrant requirement. United States v. Ross, 456 U.S. 798, 804-809, 102 S.Ct. 2157,

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2/ This was not a search incident to arrest, Cf., New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69L.Ed.2d 768 (1981).

2162-2165, 72 L.Ed.2d 572, 581-584 (1982); Roby v. State, 419 So.2d 1036, 1038 (Miss., 1982). The warrantless search of the car later at the county jail was permissible, Chambers v. Maroney, 399 U.S. 42, 52, 90 S.Ct. 1975, 1981, 26 L.Ed.2d 419, 428-429 (1970), and the cocaine found in Floyd's shaving kit was admissible. United States v. Johns, 469 U.S. 478, 487-488, 105 S.Ct. 881, 887, 83 L.Ed.2d 890, 898-899 (1985). The search of the trunk, revealing the three bales of marijuana, provided the officers with probable cause to arrest Floyd for possession of marijuana, and it was then that the character of Floyd's detention changed from an investigative stop upon reasonable, articulable suspicion to a de facto, custodial arrest involving transportation to the county jail, booking and incarceration. Dunaway v. New York, 442 U.S. 200, 212, 99 S.Ct. 2248, 2256, 60 L.Ed.2d 824, 835-836 (1979).

The Fourth Amendment question involved here is not whether the officers or any of them had probable cause to arrest Floyd prior to the search of the trunk but whether Patrolman Graddy's actions in stopping, detaining and handcuffing Floyd were permitted under the Fourth Amendment in the absence of probable cause to make an arrest. Terry v. Ohio, 392 U.S. 1, 20, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889, 905 (1968); Singletary v. State, 318 So.2d 873, 876-878 (Miss., 1975); McCray v. State, 486 So. 2d 1247, 1249-1250 (Miss., 1986).

Patrolman Graddy, the officer who stopped, detained and handcuffed Floyd, had received by radio only a description of Floyd and the car, an instruction to stop and hold Floyd until the arrival of other officers, and an admonition to "be careful." Graddy did not know the purpose of or the justification for the stop and did not know why he had been advised to be careful.

The Mississippi Supreme Court, believing that this case turned on the existence vel non of probable cause to effect a custodial arrest, did "not reach the question of whether the reasonable suspicions of one or a group of officers may provide another officer with grounds for an investigative stop." 500 So.2d at 993, fn. 1; Appendix at A18.

However, this Court has held that an officer may rely on a wanted bulletin issued upon reasonable suspicion in order to stop and detain the suspect and that the legality of the stop turns upon the facts and circumstances known to the issuing officer or agency rather than to the officer actually making the stop. United States v. Hensley, 469 U.S. 221, 232, 105 S.Ct. 675, 682-683, 83 L.Ed.2d 604, 614

(1985).[3/]

Sergeant McDaniel and Patrolman Barnett, the officers who transmitted the instruction to stop Floyd, and Patrolman Hobson, who was one of the officers at the roadblock, knew that Boches was driving a car for which he could not give an account of the ownership, that he was transporting a sizeable quantity of marijuana, and that Boches and Floyd had been travelling together. They reasonably suspected that Floyd could supply information about the ownership of the car Boches was driving, that Floyd was involved in Boches' transportation of marijuana, and that Floyd himself was also transporting marijuana. Sergeant McDaniel attempted to have Floyd stopped at the roadblock, but he was a moment or so too late. At that time, he had a

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3/ The Mississippi Supreme Court has held that official information is presumed to be authentic and that local law enforcement officers participating in a common investigation are reliable informants. Neves v. State, 268 So.2d 890, 894-895 (Miss., 1972).

sufficient reasonable, articulable suspicion to stop and detain Floyd, Adams v. Williams, 407 U.S. 143, 145-146, 92 S.Ct. 1921, 1922-1923, 32 L.Ed.2d 612, 616-617 (1972), and nothing occurred between then and the actual stop of Floyd to dispel or reduce his and the other officers' suspicions.[4/]

It seems clear, therefore, that Graddy was justified in stopping and detaining Floyd in order for Floyd to be questioned by officers with knowledge of the facts and circumstances supporting the suspicion that Floyd was engaged in criminal activity. The primary question presented here is whether Graddy's handcuffing of Floyd exceeded the permissible scope of an

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4/ By the time Floyd was actually stopped, the officers had an even stronger basis for suspecting him because by then Boches had mentioned Floyd by name, and someone had called the Alcorn County jail asking for Boches. 500 So.2d at 992, Appendix at A7, A8. There was no indication that Boches knew anyone other than Floyd in northeast Mississippi.

investigative stop so as to convert the stop into a de facto arrest requiring probable cause.

The Mississippi Supreme Court held that Floyd was subjected to a custodial arrest requiring probable cause no later than the handcuffing because, when that occurred, "Floyd could not have reasonably believed he was free to leave". 500 So.2d at 992, Appendix at A14-A15. The authority cited for this proposition is Riddles v. State, 471 So.2d 1234, 1236 (Miss., 1985), which purports to derive a definition of "arrest" from the language of United States v. Mendenhall, 446 U.S. 544, 554-555, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497, 509-510 (1980. Mendenhall did not define "arrest" at all; it was concerned with the circumstances under which a person has been "seized" within the meaning of the Fourth Amendment. Such Fourth Amendment seizures include Dunaway arrests and Terry stops, both of which rest upon

force rather than consent and neither of which admits of a reasonable belief in the person seized that he is free to go his way. Terry, supra, 392 U.S. at 34, 88 S.Ct. at 1886, 20 L. Ed.2d at 913 (White, J., concurring).

It would seem, then, that the Mississippi Supreme Court was patently incorrect in holding that Floyd was subjected to an arrest requring probable cause when he was no longer able reasonably to believe that he was free to leave. The question remains, however, whether handcuffing of a suspect automatically exceeds the permissible scope of a Terry stop. The notion that the use of particular methods of detention, such as handcuffing, must automatically convert a Terry stop into a de facto arrest, without an examination of whether such an action was reasonable within the Fourth Amendment under the circumstances of the stop, would seem to be in conflict with this Court's rejection, in United States v. Sharpe, 470 U.S. 675,

685, 106 S.Ct. 1568, 1575, 84 L.Ed.2d 605, 615 (1985), of rigid criteria for evaluating the duration of a Terry stop in favor of an approach employing "common sense and ordinary human experience."

Many State and federal appellate courts have ruled expressly that handcuffing does not automatically exceed the permissible scope of an investigative stop.5/ Other courts have held or suggested that "handcuffing of the suspect is not ordinarily proper", 3 LaFave,

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5/ United States v. Bautista, 684 F.2d 1286, 1289-1290 (9th Cir., 1982), cert. den., 459 U.S. 1211, 103 S.Ct. 1206, 75 L.Ed.2d 447 (1983); United States v. Kapperman, 764 F.2d 786, 790 fn. 4, reh. den., 770 F.2d 1084 (11th Cir., 1985); Tillman v. State, 275 Ark. 275, 630 S.W.2d 5, 7-8 (1982), cert. den., 459 U.S. 1201, 103 S.Ct. 1185, 75 L.Ed.2d 432 (1983); People v. Weeams, 665 P.2d 619, 622-623 (Colo., 1983); Howard v. State, 664 P.2d 603, 609 (Alaska App., 1983); State v. Aguirre, 130 Ariz. App. 54, 633 P.2d 1047, 1049 (1981); People v. Brown, 169 Cal.App.3d 159, 215 Cal. Rptr. 101, 105 (1985); State v. Goodson, 444 So.2d 1337, 1339-1340 (La. App., 1984); Farrow v. State, 68 Md.App. 519, 514 A.2d 35, 37-39 (1986); State v. Wakeley, 29 Wash. App. 238, 628 P.2d 835, 838 (1981).

Search and Seizure, §9.2(d), p. 367, fn. 70 (1987),[6/] and still others have considered the fact that handcuffs were not used to be an indication that the particular methods actually used were reasonable and permissible, thereby perhaps implying that the use of handcuffs would exceed the scope of investigative deten-

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6/ Citing People v. Gabbard, 78 Ill.2d 88, 34 Ill. Dec. 751, 398 N.E.2d 574, 576 (1979) ("the State admits that...handcuffing constituted an arrest, and we agree"); People v. Tebedo, 81 Mich.App. 535, 265 N.W.2d 406, 408 (1978) (justification for stop was that "suspicious person" had been seen in area; "Laying one who has been detained on his stomach on the ground and then handcuffing him are not the elements of an investigative stop" but of an arrest); State v. Williams, 102 Wash.2d 733, 689 P.2d 1065, 1069 (1984) (handcuffing not appropriate where facts did not support inference that suspect was dangerous).

As to Illinois, see also, People v. Eyler, 132 Ill.App.3d 792, 87 Ill.Dec. 648, 477 N.E.2d 774, 783-784 (1985); Cf., People v.

tion.[7]

The Petitioner submits that a per se rule that handcuffing constitutes a de facto arrest requiring probable cause frustrates legitimate and substantial law enforcement interests and unnecessarily endangers the lives of police officers. Michigan v. Summers, 452 U.S. 692, 699-701, 101 S.Ct. 2587, 2592-2593, 69 L.Ed.2d 340, 348-349 (1981); Michigan v. Long, 463 U.S. 1032, 1050-1051, 103 S.Ct. 3469, 3481, 77 L.Ed. 2d 1201, 1220-1221 (1983).

Roberts, 96 Ill.App.3d 930, 52 Ill.Dec. 473, 422 N.E.2d 154, 157 (1981) (officer's approach with gun drawn reasonable where he was alone and his handcuffs were in his car).

7/ United States v. Manbeck, 744 F.2d 360, 377-380 (4th Cir., 1984), cert. den. sub. nom. O'Hare v. United States, 469 U.S. 1217, 105 S.Ct. 1197, 84 L.Ed.2d 342 (1985) (suspect placed in patrol car); State v. Braxton, 196 Conn. 685, 495 A.2d 273, 277 (1985) (patrol car); Davis v. United States, 498 A.2d 242, 245 (D.C.App., 1985) (officer drew service revolver).

Undeniably, being handcuffed is a serious intrusion on a citizen's personal security and privacy. By the same token, the classic Terry "stop-and-frisk" "is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." Terry, supra, 392 U.S. at 16-17, 88 S.Ct. at 1877, 20 L.Ed.2d at 903. But just as a rigid time limit "would undermine the equally important need to allow authorities to graduate their responses to the demands of any particular situation", Sharpe, supra, 470 U.S. at 686, 105 S.Ct. at 1575, 84 L.Ed.2d at 615, quoting United States v. Place, 462 U.S. 696, 709 n. 10, 103 S.Ct. 2637, 2646, 77 L.Ed.2d 110, 122 (1983), so a rigid, artificial and overly-simple limitation on the form of the detention is fundamentally at odds with the Terry doctrine.

In this case, the stop was made after dark[8/] by a lone officer on a lonely stretch of of country highway. Graddy had been advised by radio to be careful.[9/] He knew before he handcuffed Floyd that other officers would soon be there to question Floyd, and in fact the detention was brief, lasting no more than five to ten minutes. It is true that Floyd was cooperative and did not appear to be armed or dangerous, but a co-operative suspect, like a gun thought to be unloaded, can often do much

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8/ Floyd's own action in driving through the roadblock, rather than aiding Boches in giving the officers an account of the ownership of the Boches car, created the situation of the stop's being made by Graddy alone at 9:00 p.m. rather than by five officers at the roadblock at 7:30 p.m., before sundown. See, Sharpe, supra, 470 U.S. at 688, fn. 6, 105 S.Ct. at 1576, 84 L.Ed.2d at 616-617.

9/ Although Graddy did not know the basis for this advice, he was justified in relying upon it. Floyd was suspected of car theft and drug-trafficking, and it is not unusual for persons engaged in these activities to use violence.

mischief, and an officer under these circumstances should not be required to "await the glint of steel before he can act to protect his own safety". People v. Benjamin, 51 N.Y.2d 267, 271, 414 N.E.2d 645, 648 (1980).

While it probably would have been unreasonable for the officers at the roadblock to have handcuffed Floyd had they been successful in stopping him then and there, and while it probably would have been unreasonable for Graddy to have kept Floyd in handcuffs for an inordinately extended period of time, the handcuffing here was a reasonable precaution under these circumstances, and it was rationally related to the purpose of the stop, which was to hold Floyd until other officers could arrive and either have their reasonable suspicions dispelled or pursue their investigation. Here, as in Sharpe, the officers acted diligently in all their attempts "to confirm or dispel their

suspicions quickly." 470 U.S. at 686, 105 S. Ct. at 1575, 84 L.Ed.2d at 616.

It is respectfully submitted that the Circuit Court of Alcorn County ruled correctly in admitting the marijuana and cocaine into evidence against Floyd and that the Supreme Court of Mississippi ruled incorrectly in finding reversible error therein.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests the Court to grant this Petition for Writ of Certiorari to the Supreme Court of Mississippi to review the decision herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Wayne Snuggs, an Assistant Attorney General for the State of Mississippi, do hereby certify that all parties required to be served have been served by this day causing to be mailed via United States Postal Service, first-class postage prepaid, a true and correct copy of the foregoing Petition for Writ of Certiorari to each of the following:

Hon. John B. Farese, Sr.
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Post Office Box 98
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and

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Oxford, Mississippi 39655

This the 10th day of April, 1987.

Wayne Snuggs
WAYNE SNUGGS

DONNIE WAYNE FLOYD

v.

STATE OF MISSISSIPPI

NO. 55977.

Supreme Court of Mississippi.

December 10, 1986.

Rehearing Denied Feb. 11, 1987.

DONNIE WAYNE FLOYD

v.

STATE OF MISSISSIPPI

NO. 55977.

Supreme Court of Mississippi.

December 10, 1986.

Defendant was convicted in the Circuit Court, Alcorn County, Thomas Gardner, J., of possession of more than one kilogram of marijuana with intent to sell, transfer or distribute and possession of cocaine. Defendant appealed. The Supreme Court, Dan M. Lee, J., held that at time police officers made warrantless arrest of defendant, they had at most a suspicion that defendant was involved in criminal activity with another individual who had

been arrested, and since arrest was made on less than probable cause, it was illegal.

Reversed and remanded.

1. Arrest - 63.4(1)

When suspect is apprehended without warrant, police officer must have reasonable cause to believe felony has been committed and reasonable cause to believe that person proposed to be arrested is person who committed it.

2. Arrest - 63.5(4)

Investigative stop may be made even where officials have no probable cause to make arrest as long as they have reasonable suspicion, grounded in specific and articulable facts, that person they encounter was involved in or is wanted in connection with completed felony or some objective manifestation that person stopped is, or is about to be engaged in criminal activity; however, stop must be limited in scope.

3. Arrest - 63.4(3)

At time police officers made warrantless arrest of defendant, they had at most a suspicion that defendant was involved in criminal activity with another individual who had been arrested, and the arrest having been made on less than probable cause, was illegal.

Ronald W. Lewis, Holcumb, Dunbar, Connell, Chaffin & Willard, Oxford, Farese, Farese & Farese, Ashland, for appellant.

Edwin Lloyd Pittman, Atty. Gen. by DeWitt Allred, Sp. Asst. Atty. Gen., Jackson, for appellee.

Before WALKER, C.J., and DAN M. LEE and SULLIVAN, JJ.

DAN M. LEE, Justice, for the Court:

Donnie Wayne Floyd appeals his conviction for possession of more than one kilogram of marijuana with intent to sell, transfer or distribute and his conviction of possession of

cocaine. Floyd was convicted in Alcorn County Circuit Court where he was sentenced to fifteen years and fined $35,000.00 on the marijuana charge and sentenced to three years and fined $3,000.00 on the cocaine charge, the sentences to run consecutively. Floyd assigns eight errors in the trial below. Since we find his conviction must be reversed because the trial court erred in failing to suppress illegally obtained evidence, we need only discuss this error.

FACTS

Donnie Floyd began driving home to Memphis from Miami early on the morning of July 13, 1982. He was driving an Oldsmobile. Unknown to police initially, Bruce Allen Boches followed Floyd from Miami driving a white Pontiac. About 7:30 p.m. that day the two approached a roadblock on U.S. Highway 72 just east of Corinth.

Sgt. H.B. McDaniel of the Mississippi Highway Patrol was in charge of the roadblock. McDaniel and several troopers were inspecting licenses, car registrations and tags. McDaniel saw the two cars pull into a driveway down the highway about one hundred to one hundred fifty yards from the roadblock. The Oldsmobile pulled in first followed by the Pontiac. McDaniel decided to drive down to the driveway to investigate. When he approached however, the Pontiac pulled out of the driveway and headed away from the roadblock. McDaniel pulled the Pontiac over. While McDaniel approached the Pontiac, Floyd in the Oldsmobile pulled out of the driveway and proceeded to the roadblock. Having his driver's license and other papers in order, Floyd was passed through without incident and headed west. Sometime thereafter McDaniel radioed ahead and attempted to have troopers detain him.

After questioning Boches, McDaniel learned Boches had a Tennessee drivers license and the Pontiac had a substitute Mississippi tag. Boches did not have the car registration and told McDaniel the Pontiac was owned by a friend whose name Boches did not know. He later said that the Pontiac was actually owned by the friend of a friend. McDaniel leaned his head into the Pontiac while speaking to Boches and smelled marijuana. McDaniel told Boches he would be held while troopers investigated whether the car was stolen and McDaniel summoned Trooper Harold Holder away from the roadblock to drive the Pontiac back to the roadblock. Holder also testified he smelled marijuana in the Pontiac and it handled as though heavily loaded in the rear. McDaniel drove Boches to the roadblock and at this time Boches told him the name of the driver of the Oldsmobile. Troopers on two different occasions radioed the

New Albany district headquarters to put out a bulletin which contained a description of the Oldsmobile and the driver and a request that the Oldsmobile be stopped and the driver held.

Boches was taken to the Alcorn County jail and the Pontiac was impounded. Troopers initiated efforts to obtain a search warrant for the Pontiac. After Boches was brought to jail, McDaniel received a telephone call from an unidentified person who wished to know if Boches was at the jail and if he could come to the telephone. McDaniel denied this request and the conversation ended. Within several minutes, two troopers left to search pay telephones in the area of U.S. Highway 72 West.

Meanwhile, Trooper Maurice Graddy had taken up a position along U.S. 72 in response to the radio message which he received about 8:00 p.m. About an hour later Graddy spotted the Olds and pulled the car over. Graddy tes-

tified at the suppression hearing that the driver exited the car and approached Graddy. Graddy inspected the driver's license and asked him to sit in the front passenger seat of his patrol car. Graddy then informed his New Albany district headquarters that Donnie Floyd was in custody. Headquarters replied that Graddy should use extreme caution, whereupon Graddy handcuffed Floyd for his own protection. Troopers John Wayne Hobson and Thurman Clayton arrived as backup about five to ten minutes later, Graddy testified.

The Oldsmobile's engine as still running when Hobson arrived, and he reached into the car, turned off the engine and pulled out the keys. He smelled marijuana and canteloupe in the car. Before taking out the keys, Hobson had paused at the rear of the Oldsmobile and smelled marijuana. He returned to the rear of the Oldsmobile and again smelled marijuana.

With Clayton watching, Hobson opened the trunk and discovered three bales of some substance wrapped in plastic. The middle bale of the three was not wrapped completely so Hobson could see a leafy substance later identified as marijuana. Hobson closed the trunk and followed as Trooper Clayton drove the Oldmobile to the Alcorn County Jail.

The Oldsmobile was later searched again at the Alcorn County Jail. There was contradictory testimony concerning whether the Oldsmobile was searched after or contemporenous with a search of the Pontiac incident to a search warrant. Maj. W.C. Mayhall, Alcorn County Deputy Sheriff, searched the Oldsmobile and found shaving kit on the floorboard. In the kit was a plastic bag of white powder which was visible because the kit was open. The substance was later identified as 1.2 grams of cocaine.

The search of the Pontiac revealed four bales of substance later identified as marijuana.

The trial court held a suppression hearing and determined the marijuana and the cocaine seized from Floyd's Oldsmobile to be admissible because they were not the product of an illegal arrest. Floyd contends this was error. This contention necessarily requires that we determine whether the trial court erred in finding that Floyd was arrested upon probable cause.

DISCUSSION OF LEGAL ISSUES

DID THE HIGHWAY PATROL TROOPERS HAVE PROBABLE CAUSE TO ARREST FLOYD?

[1] There is no question that Floyd was apprehended without a warrant. Under such circumstances

> [A]police officer must have (1) reasonable cause to believe a felony has been committed; and (2) reasonable cause to believe that the

person proposed to be arrested is the one who committed it.

* * * * *

"Probable cause" means less than evidence which would justify condemnation, but more than bare suspicion. Hester v. State, 463 So.2d 1087 (Miss. 1985), citing Powe v. State, 235 So.2d 920 (Miss. 1970). Henry v. State, 486 So.2d 1209, 1212 (Miss. 1986).

In Jones v. State, 481 So.2d 798, 800-01 (Miss. 1985) it was said:

In Swanier v. State, 481 So.2d 473 So.2d 180 (Miss. 1985), this Court stated:

The existence of "probable cause" or "reasonable grounds" justifying an arrest without a warrant is determined by factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act. The determination depends upon the par-

ticular evidence and circumstances of the individual cases.

Id. at 186, quoting Smith v. State, 386 So.2d 1117, 1119 (Miss. 1980).

Our cases recognize that law enforcement officers may detain a person short of an actual arrest for purposes of an investigative stop. McCray v. State, 486 So.2d 1247 (Miss. 1986). Vehicles also may be the subject of an investigative stop. See United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985); United States v. Hensley, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985); United States v. Cortez, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)

[2] An investigative stop may be made even where officials have no probable cause to make an arrest as long as they have "a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was

involved in or is wanted in connection with a completed felony...or 'some objective manifestation that the person stopped is, or is about to be engaged in criminal activity.' ..."McCray, 486 So.2d at 1249-50. An investigative stop must be limited in scope, however. "Where a detention...exceeds the scope of an investigative stop, it approaches a seizure. to justify a search and seizure without a warrant, the state must show probable cause for arrest." Id. at 50.

We need not delineate our view of the dividing line between detention and arrest, for as a practical matter it is clear Floyd was arrested, at the latest, when Trooper Graddy handcuffed him. See Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). No formal declaration is required for the subject to be considered under arrest Swainer, 473 So.2d at 196, and in this factual setting Floyd

could not have reasonably believed he was free to leave. See Riddles v. State, 471 So.2d 1234 (Miss. 1985). Indeed, the state does not contend otherwise. Trooper Graddy testified at the suppression hearing that at the time Floyd was handcuffed he was under arrest.

[3] Since the arrest was made without benefit of a warrant, and since the arrest preceded the discovery of the marijuana in Floyd's vehicle, probable cause must be based on what the officers knew at the time of Floyd's arrest.

Though the issue is not without some difficulty, we think the troopers arrested Floyd at a time when they had at most a suspicion that Floyd was involved in criminal activity. The arrest having been made on less than probable cause, it was illegal.

At the time Graddy handcuffed Floyd, the troopers knew that Floyd had pulled off the

road into a driveway with the Pontiac driven by Boches before reaching the roadblock. They knew that Boches mentioned Floyd by name. They knew someone had called the Alcorn County jail asking for Boches.

It is true Sgt. McDaniel and Trooper Holder had smelled marijuana in the Pontiac Boches was driving, but no one at the roadblock smelled marijuana in Floyd's car as he was passed through the roadblock. Nothing else linked Floyd to the marijuana in the Pontiac. Boches had told police the Pontiac was not his but McDaniel did not testify to anything Boches said which connected Floyd to the marijuana or to the Pontiac. The Pontiac was not reported stolen.

No doubt, given the information the patrolmen had concerning the Boches vehicle they had a suspicion that Floyd might have been involved in some criminal activity. This suspi-

cison may or may not have warranted detaining the Oldsmobile to question Floyd.[1/] However,

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1/ Trooper Graddy had neither a reasonable suspicion nor probable cause. Graddy acted on the most cursory of directives, and developed no information during the stop which might have helped establish probable cause. In fact, Graddy had no idea what Floyd was wanted for. His testimony during the suppression hearing makes this clear.

During examination at the suppression hearing, Graddy was asked the following questions and he gave the following responses:

Q. What were the instructions you were given by headquarters?

A. They said, you know, they gave me a description of the vehicle and, you know, gave us the name of the person driving it and told me to be on the lookout for it and if I saw it to stop it and to advise them back when I had the man stopped and I did.

* * * * *

Q. Did Mr. Floyd commit any offense in your presence?

A. No, sir.

Q. Was he cooperative?

A. Yes, sir.

Q. Did he offer you any resistance?

A. No, sir.

Q. Now, when you stopped him, isn't it a fact, Patrolman Graddy, that he asked you why you were stopping him?

we cannot agree with the trial court that Floyd and Boches were obviously working in concert to

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A. Yes, sir.

Q. And you said, "I don't know, I was just told to."?

A. Yes, sir.

Q. And then when you called in and told them in Corinth that you had stopped Donnie Floyd, then he asked you again why and you still didn't know, did you?

A. No, sir.

* * * * *

Q. In other words, you had no charges against him?

A. No, sir, I didn't.

The state argues that Graddy's personal knowledge is not determinative of probable cause because we must take into account the "collective knowledge" of the officers working on the investigation, or we must look to the total of the laminated layers of information officers had at the time of Floyd's arrest.

However, we do not reach the question of whether the reasonable suspicions of one or a group of officers may provide another officer with grounds for an investigative stop, since it is clear Floyd was not merely detained but arrested. Likewise, we need not determine to what extent law enforcement officers may conduct searches or make arrests based on information known to other officers, since we hold that the officers lacked probable cause in toto.

transport marijuana. The state argues probable cause existed by virtue of the assumption that Floyd must have known what Boches was doing.

On the contrary, everything the officers knew at the time of Floyd's arrest was consistent with Boches guilt but was little more than speculation and conjecture as to Floyd. It certainly did not rise to the dignity of probable cause. At the time, the officers had no idea that Boches and Floyd had traveled from Miami. McDaniel only learned Floyd's name as the result of an innocuous question such as "who's your friend?" Officers at the roadblock did not smell marijuana in Floyd's Oldsmobile when he was passed through, and Floyd's papers were in order. The fact that Floyd approached the roadblock while Boches did not could have denoted some joint criminal escapade, but it also could have meant that Floyd was unaware of what contraband

Boches might have been transporting.

McDaniel initially told Boches that he would be held until officers could determine if the Pontiac was stolen. No doubt McDaniel might have suspected Floyd knew something about the ownership of the Pontiac, and this could have provided another basis for detaining Floyd. But even if McDaniel was concerned only with Floyd's possible involvement with car theft, there surely existed means of resolving this question short of arrest.

"Based upon the totality of circumstances of this case," Rome v. State, 348 So.2d 1026, 1028 (Miss. 1977), we hold there was insufficient evidence at the time of Floyd's arrest to establish probable cause that Floyd had committed or was committing a felony.

In Rome we found illegal an arrest made by an officer who "surmised that the car and its then unidentified driver were possibly on an unlawful mission. The officer's hunch proved

to be accurate, but as this Court had previously said, an unlawful search, though made in honest belief of right, remains unlawful and its fruits forbidden." Id. at 1029.

Therefore, the motion to suppress should have been sustained and the marijuana and the cocaine found in Floyd's Oldsmobile should not have been admited over appellant's objection.

We note finally that Floyd raises as error his prosecution under a multicount indictment. Since we reverse on other grounds we do not reach this contention. However, it appears to us Floyd's argument is well taken in this instance. Finding that Floyd was illegally arrested, and the search incident thereto was invalid, his conviction is hereby reversed and remanded.

REVERSED AND REMANDED.

WALKER, C.J., ROY NOBLE LEE and HAWKINS, P. JJ., and PRATHER, ROBERTSON, ANDERSON, SULLIVAN and GRIFFIN, JJ., concur.

No. 86-1643

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

THE STATE OF MISSISSIPPI,

Petitioner

v.

DONNIE WAYNE FLOYD,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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QUESTION PRESENTED FOR REVIEW

Did the court below err in concluding, based on the specific facts in the case, that the investigative stop of the defendant was so intrusive as to become an arrest when the defendant was handcuffed and placed in a police car?

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STATEMENT OF THE CASE

The Respondent generally accepts the Petitioner's statement of the case, with the exception of several crucial facts which the Petitioner omitted. The facts demonstrate that Donnie Wayne Floyd drove his car through a roadblock in Corinth, Mississippi, at about 7:30 p.m. on July 13, 1982 after first stopping about 100 yards before the roadblock. Floyd's Oldsmobile aroused no suspicion in the four police officers who manned the roadblock despite the fact that they had seen him stop prior to the roadblock, and Floyd possessed a valid driver's license and registration. However, the car of Bruce Allen Boches, with whom Floyd apparently had been traveling, was stopped by police when it turned and headed away from the roadblock. Because Boches's car had a substitute Mississippi tag and Boches did not have the car registration, the

police suspected that the car was stolen. They then impounded the car and took Boches to the Alcorn County jail. Boches told the police that Floyd was the driver of the Oldsmobile, and the police radioed the district headquarters to put out a bulletin which contained a description of the Oldsmobile and the driver, and a request that the car be stopped and the driver held.

At about 9:00 p.m., Trooper Maurice Graddy spotted Floyd's car and pulled it over. When stopped, Floyd responded to the officer's questions courteously and cooperatively. Graddy then ordered Floyd to sit in the patrol car and informed headquarters that Floyd was in custody. Headquarters replied that Graddy should "be careful," at which point he handcuffed Floyd's arms behind his back. Graddy later testified that he had no idea why he had been ordered to stop Floyd, and had no reason to believe that Floyd

was dangerous other than having been told to be careful.

About ten minutes later, backup officers arrived and Floyd's car was immediately searched as one of the troopers opened the trunk and discovered three bales of what appeared to be marijuana. The Oldsmobile was driven to the Alcorn County jail, where it was fully searched at about the same time as Boches's car, which was being searched for the first time pursuant to a search warrant. Marijuana was found in Boches's car, and 1.2 grams of cocaine was discovered in Floyd's car, in addition to the marijuana.

SUMMARY OF ARGUMENT

The Supreme Court of Mississippi ruled below that because of the particular circumstances in this case, the handcuffing and detaining in a police car of the Respondent Donnie Wayne Floyd

turned an investigative stop into an arrest. Contrary to the assertions of the Petitioner, the court did not rule that the handcuffing of a suspect automatically transforms an investigatory stop into a de facto arrest. Thus, the decision below was correctly decided and is fully consistent both with the holdings of this Court and with decisions of federal courts of appeals and state courts which have considered similar issues. Therefore, there is no reason for this Court to accept this case for decision.

ARGUMENT

I. THE RULING BELOW WAS FULLY CONSISTENT WITH THE PRIOR DECISIONS OF THIS COURT AND WAS CORRECTLY DECIDED.

In an attempt to create the impression that the ruling of the Mississippi Supreme Court is in conflict with the decisions of this Court, and

with decisions of other state and lower federal courts, the Petitioner has consistently mischaracterized the nature of the court's holding. While the decision of the court is not as fully elaborated as it might be, it is clear that the court did not, as the Petitioner claims, adopt a per se rule that handcuffing an individual during an investigative stop turns the stop into a de facto arrest. Therefore, the Petitioner's statement of the questions presented for review is misleading, and its argument is based on a distortion of the actual decision rendered below.

A careful reading of the decision of the Mississippi Supreme Court reveals no hint of a per se rule regarding handcuffing during an investigatory stop. Instead, the court's opinion simply traces this Court's recent rulings regarding the nature and scope of an investigative stop, citing United States v. Sharpe, 470 U.S.

675 (1985); United States v. Hensley, 469 U.S. 221 (1985); Florida v. Royer, 460 U.S. 491 (1983), and United States v. Cortez, 449 U.S. 411 (1981), and utilizes the balancing approach adopted by this Court in those and other cases.

Relying on its prior decision in McCrary v. State, 486 So. 2d 1247, 1249-50 (Miss. 1986), the Mississippi Supreme Court stated below that "[a]n investigative stop must be limited in scope. . . . 'Where a detention. . . exceeds the scope of an investigative stop, it approaches a seizure'" which must be justified by probable cause. Floyd v. State of Mississippi, 500 So. 2d 989, 992 (Miss. 1986). For this reasoning, the court in McCrary relied on this Court's ruling in Florida v. Royer, supra, that when a detention becomes "a more serious intrusion on . . . personal liberty than is allowable on mere suspicion of criminal activity," the detention exceeds the

scope of an investigative stop and becomes an arrest. 486 So. 2d at 1249 (quoting 460 U.S. at 502). The court below also cited Florida v. Royer for this purpose as it concluded that the placing of Floyd in the patrol car with his hands handcuffed behind his back was, under the circumstances, such a serious intrusion on personal liberty as to go beyond the dividing line between detention and arrest. 500 So. 2d at 992. In fact, the court specifically avoided the adoption of any per se rules regarding when an investigative stop becomes an arrest, stating that because of the extreme facts in the case "[w]e need not delineate our view of the dividing line between detention and arrest. . . ." Id.

This approach is clearly consistent with the prior decisions of this Court. In Terry v. Ohio, 392 U.S. 1, 27 (1968), the Court recognized a "narrowly drawn" exception to the probable cause

requirement for certain seizures of the person which do not rise to the level of full arrests. A legitimate Terry stop was said to involve a "wholly different kind of intrusion upon individual freedom" than a traditional arrest. Id. at 26. Subsequently, in Dunaway v. New York, 442 U.S. 200, 210 (1979), the Court noted that Terry "defined a special category of Fourth Amendment 'seizures' so substantially less intrusive than arrests that the general rule requiring probable cause to make Fourth Amendment 'seizures' reasonable could be replaced by a balancing test." (Emphasis added.) Similarly, in United States v. Place, 462 U.S. 696, 703 (1983), the Court stated that "[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." (Emphasis added.) See also United

States v. Sharpe, supra, 470 U.S. at 685 (in determining whether detention was investigative stop or arrest, court should balance interests employing "common sense and ordinary human experience").

In the decision below, the court simply analyzed the facts before it and concluded that the extreme nature of the intrusion on Floyd's fourth amendment interests and his personal liberty--having his hands handcuffed behind his back and being detained in a patrol car--was not outweighed by any sufficient governmental interest in crime detection or prevention. Although the Petitioner understandably minimizes the fact, the only facts actually known to the police at the time Floyd was stopped was that he had cleared a roadblock manned by four troopers without arousing any suspicion, but that an individual named Boches, with whom he had been

traveling in tandem, was being held because of a lack of a valid registration for the car he was driving. Additionally, the police testified at trial that they had smelled the odor of marijuana about Boches's car. Contrary to the Petitioner's version of the facts (Petition at 15), at the time of Floyd's detention the police did not know that Boches was transporting a sizable quantity of marijuana, for the search of Boches car took place long after Floyd had been stopped and handcuffed. At best, the police at headquarters believed that Boches was in possession of an automobile without proper identification and that the car smelled like it contained an indeterminate amount of marijuana.

This information can scarcely be considered sufficient to justify the extreme nature of Floyd's detention. Nor can the Petitioner add support to its argument by claiming that Trooper

Graddy found justification for handcuffing Floyd in the directions from headquarters to "be careful," for those at headquarters could not have utilized such extreme measures had they stopped Floyd themselves. See United States v. Hensley, supra, 469 U.S. at 233 (investigative stop on basis of flyer or bulletin valid if the stop was not more intrusive than would have been permitted by the department issuing the flyer or bulletin).

The Petitioner attempts to read major significance into the fact that the court below stated at one point that Floyd could not reasonably have believed that he was free to go when he was handcuffed and placed in the police car. Clearly, the court's decision regarding the extent and intrusive nature of the investigative stop did not rest on the subjective belief of Floyd, and the Petitioner's attempt to transform this into a basis for the court's opinion--and an

issue on appeal--is misplaced.

In short, the information available to Trooper Graddy and the other troopers at the time of Floyd's stop, handcuffing, and detention in the police car did not support the intrusive nature of the stop, and thus utilizing the balancing approach adopted by this Court, it is clear that the Mississippi Supreme Court was correct in deciding that the stop of Floyd had exceeded the bounds of a permissible investigative stop.

II. THE DECISION OF THE MISSISSIPPI SUPREME COURT WAS NOT IN CONFLICT WITH DECISIONS OF OTHER STATE COURTS OR FEDERAL COURTS OF APPEALS.

As noted in the previous section of this Brief, the Mississippi Supreme Court did not adopt a per se rule that an individual is arrested when handcuffed, but rather utilized a

balancing test to determine that in the present circumstances, the extremely intrusive nature of Floyd's detention was not justified by the information available to the officers at the time of his stop. Thus, the court's decision was clearly in accord with the decisions on this issue from other jurisdictions, including the cases claimed by the Petitioner to be in conflict.

For example, United States v. Bautista, 684 F.2d 1286 (9th Cir. 1982), cert. denied, 459 U.S. 1211 (1983), cited by the Petitioner as being in conflict with the decision below, can easily be seen as being in accord with the Mississippi Supreme Court's analysis. The Ninth Circuit determined in Bautista that the use of handcuffs in an investigative stop was permissible because of the particular circumstances of the case. The facts showed that the defendants were stopped and handcuffed because they matched perfectly the

description of two individuals who had moments before committed an armed bank robbery. The two suspects were handcuffed not only because of the nature of the criminal activity involved, the obvious potential for danger, and the fact that one suspect appeared to be ready to flee, but also because they were left with one police officer while the other officer investigated the suspects' story as to what they had just been doing. These factors, which all combined to justify the handcuffing, were not present in the present case, so it is not surprising that the Mississippi Supreme Court reached a different conclusion as to the propriety of the handcuffing in this case.

Similarly, an examination of United States v. Kapperman, 764 F.2d 786 (11th Cir. 1985), also cited by the Petitioner, reveals that it is totally consistent with the decision below. In

Kapperman, the defendant was stopped, handcuffed, and placed in a police car after having been under direct surveillance for several hours on suspicion of involvement in drug-smuggling activity. At the time of the stop, the police knew that the defendant matched the detailed description from the United States Customs office of a fugitive from justice, knew that he had registered under a false name at a motel, knew that he had fled drug-smuggling charges in another state, and knew that he had taken evasive action when followed by police. The court did not even address the issue of the significance of the handcuffing, for it assumed that the restraint of the defendant was in fact an arrest and concluded that there was probable cause to arrest the defendant at the time of the stop. Id. at 790-91. In a footnote, the court noted in dictum that in analyzing the issue of the use of force in an in-

vestigative stop, the inquiry is reasonableness. Id. at 790 n.4. It is apparent, therefore, that the holding and statements of the court in Kapperman are in no way inconsistent with the decision below.

The same conclusion must be drawn in reference to the state court cases alleged by the Petitioner to be in conflict. People v. Weeams, 665 P.2d 619 (Colo. 1983) is representative of the cases cited by the Petitioner. In Weeams, the Colorado Supreme Court upheld the use of handcuffs in an investigative stop of two men who matched the description of men who had just committed two armed robberies, killing one victim. Noting that "[t]he critical inquiry is whether the officers' actions were reasonable under the circumstances," the court concluded that "the extended intrusion under the narrow circumstances of this case" was justified since "it was not

unreasonable to handcuff the defendants to ensure the safety of the officers." Id. at 622 (emphasis added). Of course, the factors present in Weeams which justified the handcuffing were absent in the present case, so the Colorado decision cannot be viewed as being in conflict with the decision below. See also Tillman v. State, 275 Ark. 275, 630 S.W.2d 5 (1982), cert. denied, 459 U.S. 1201 (1983) (issue before court was whether facts justified initial stop; issue of whether handcuffing turned stop into arrest was not discussed by court); Howard v. State, 664 P.2d 603 (Alaska App. 1983) (handcuffing of two armed suspects was proportional to the risk involved because investigative stop took place in heavily wooded area where police could not see possible accomplices, and suspects were thought to have committed serious crime of violence and armed robbery); State v. Aguirre, 130 Ariz. App.

54, 633 P.2d 1047 (1981) (handcuffing permitted because suspect had acted evasively and appeared to be trying to escape); People v. Brown, 169 Cal. App. 3d 159, 215 Cal. Rptr. 101 (1985) (upheld validity of handcuffing of bank robbery suspect, who had been seen running full speed in street clothes from bank and who resisted attempts by officer to check for weapons); State v. Goodson, 444 So. 2d 1337 (La. Ct. App. 1984) (handcuffing of armed rape suspect who fled from police despite numerous demands to stop held reasonable; court actually found that probable cause to arrest existed at time of handcuffing); Farrow v. State, 68 Md. App. 519, 514 A.2d 35 (1986) (court upheld handcuffing of persons suspected of having committed one armed robbery and suspected of being in the process of committing another); State v. Wakely, 29 Wash. App. 238, 628 P.2d 835 (1981) (police who were responding to

report of gunshots were entitled to handcuff suspects who had come from that area and had been seen to have been involved in furtive activity).

These case summaries indicate that the Petitioner has fabricated its claimed conflict in the courts, and that in fact the courts have weighed the nature of the crime involved as well as the circumstances of the particular investigative stop in determining the validity of an intrusive method of detention such as handcuffing. Merely because the facts in this case did not demonstrate any necessity or requirement that Floyd be handcuffed does not mean that the decision of the Mississippi Supreme Court is in conflict with the decisions of other courts in cases which involved compelling justifications for handcuffing a suspect.

CONCLUSION

For the foregoing reasons, the Respondent requests this Court to deny the Petitioner's Petition for Writ of Certiorari to the Supreme Court of Mississippi.

Respectfully submitted,

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